No. 545

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OCT 20 1945
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Supreme Court of the United States

OCTOBER TERM—1945

GEORGE McMANUS,

Petitioner,

against

MARINE TRANSPORT LINES, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

GEORGE McMANUS, your petitioner, respectfully prays for a writ of certiorari to review the decree of the United States Circuit Court of Appeals for the Second Circuit, entered in the above entitled action on the 6th day of June 1945. Your petitioner's time to make this application having been duly extended by order of Mr. Justice Rutledge of this court from September 25th to October 25th, 1945.

The Matter Involved

ONE.—Your petitioner is a citizen of the United States, 50 years of age (R. 30). He is and for many years has been a licensed marine engineer by vocation. For a number of years he has been employed as licensed chief engineer of merchant vessels of the United States. The respondent is a corporation organized and existing under and by virtue of the laws of the State of New York.

Two.—On the 1st of August 1942, the petitioner was employed as a licensed first assistant engineer on the L. T. C. No. 1, a powered canal towboat, owned and operated by the respondent.

Three.—That while the petitioner was so employed and while said towboat, the L. T. C. No. 1, was engaged in the work of towing a barge or vessel within navigable waters of the State of New York, and the United States, and engaged in interstate commerce, he fell from a saw-horse on which he was standing and working, under orders of his immediate superior, the chief engineer of said merchant vessel of the United States.

Four.—That as a result of falling from said saw-horse, which he alleged in his complaint was dangerous and defective, he sustained an injury to his person which caused him to be disabled for a short period of time.

Five.—Petitioner filed a libel in the United States District Court, Southern District of New York, in which he set forth a cause of action under the Jones Act, said libel being filed in November 1942 (R. 2 to 5).

Six.—An answer was duly filed by the respondent in which it denied negligence, but admitted ownership and control of the vessel (R. 6 to 8).

Seven.—The case was duly tried on May 3rd, 1943, before the Honorable Murray Hulbert, District Judge, and the Honorable Court at the end of the trial rendered its decision and made its findings of fact and conclusions of law (R. 83 to 88), and correctly held that the libellant had failed to establish by the required measure of proof, any cause of action for indemnity (R. 254).

Eight.—The District Court proceeded to award the libellant Fifty ($50.00) Dollars maintenance for the pe-

riod of two weeks that he had been definitely disabled at the rate of Twenty-five ($25.00) Dollars per week, and Fifty ($50.00) Dollars to cover payment of a doctor who had treated him and hastened his recovery, and in addition thereto, the court having found that the petitioner who had been unable to go to sea for the voyage which he had contracted for, due to the infection of his leg, awarded the petitioner the additional sum of One hundred fifty ($150.00) Dollars as wages (R. 259-261) and then stated: "my conclusion of law is that the libellant is entitled to recover from the respondent on the second cause of action maintenance and cure the sum of $250.00."

NINE.—From this decision of the District Court, the respondent appealed to the United States Circuit Court of Appeals for the Second Circuit, and on the 6th of June 1945, said court rendered the following opinion *per curiam*:

> "In the course of his employment as an engineer on a vessel of the appellant, the libellant sustained a scratch on his left shin. The injury did not incapacitate him and he continued to perform his duties until the end of the voyage, August 29, 1942. Thereafter, on September 3rd, he entered the employ of another shipowner for whom he worked until September 17th, when the ship's doctor discovered an ulcerous condition of the left shin requiring medical attention. The libellant obtained treatment at a United States Marine Hospital from September 18th, 1942, to September 30th, 1942, when he was pronounced cured. During this same period he was also treated by a private physican at a cost of $50. By the present suit the libellant sought first, indemnity under the Jones Act in the sum of $3000, and second, recovery for maintenance and cure in the sum of $1,500.
>
> The count for indemnity was dismissed for failure of proof.

On the second cause of action, the court awarded $250, of which $50 was for the doctor's bill, $50 for maintenance for the two weeks' period commencing September 18, 1942 and $150 loss of wages during the same two weeks. The appellant challenges the propriety of the allowance for loss of wages and for doctor's bill.

Under the authorities, the award of wages after the end of the voyage and in addition to maintenance cannot be supported. Great Lakes S. S. Co. v. Geiger, 261 Fed. 275 (6 C. C. A.); see also Reed v. Canfield, Fed. Cas. No. 11,641, 20 Fed. Cas. 426 at 429; Chelentis v. Luckenbach S. S. Co., 243 Fed. 536, 538 (2 C. C. A.), aff'd 247 U. S. 372.

There was no error in the allowance of $50 for private medical attention. If the private treatment gave the seaman benefits he could not obtain by recourse to the free Marine Hospital service, the expense would be recoverable. See Calmar S. S. Corp. v. Taylor, 303 U. S. 525, 531, 1938 A. M. C. 341. Under the testimony we cannot say that it did not.

The decree is modified by reducing the award to the libellant for $100. No Appellate costs are allowed to the appellant."

Reasons for Allowance of This Writ

It cannot be urged here that the decision of the United States Circuit Court of Appeals in the Second Circuit is in discord with decisions of other U. S. Circuit Courts, for indeed, the only case similar to it—*Great Lakes* v. *Geiger,* 261 Fed. 275 (6th Circuit), the Circuit Court likewise reverses a district judge for awarding in its discretion to a seaman, in a maintenance and cure case, a small sum in the form of wages, which amounted to slightly more than the cost of board and lodging and doctor's bills.

This petition is based upon the fact that two district judges have in different and separate cases, one decision

in 1918 and the other in 1944, in the exercise of what they believed to be their power as admiralty judges, awarded libellants, who in their judgment deserved it, small sums in addition to maintenance as a matter of equity and justice, and in each instance, the Circuit Court of Appeals has overruled said decisions.

Furthermore, petitioner urges the granting of this writ because he believes that the decisions of the District Courts respectively, were well within the power, limitations and discretion vested in the District Courts by Congress of the United States and the Constitution, and that the decisions of the United States Circuit Court of Appeals, without adequate reason or justice, have in each instance upset and overruled and vacated these judgments.

(a) Your petitioner further urges that the United States Circuit Court of Appeals in this case, has not given due and careful consideration to the reasons urged by your petitioner in its brief before the said court, *i. e.*, that the judicial power in a court of admiralty was created by Article 3, Section 2 of the Constitution of the United States.

(b) That the doctrine of Maintenance and Cure originated in the mind of the District Court and was taken from the ancient maritime codes without regard to any act of Congress or any established rule of the English Admiralty.

(c) That the doctrine of Maintenance and Cure has gradually been enlarged, liberalized and extended by the Admiralty Courts of the United States, and that the decision of the District Court in your petitioner's case was well within the vested power of a court of admiralty of the United States, to do justice to a seaman, ward of the court, as stated at folio 260 of the record:

> "Now, I am sympathetic with the principle that in these cases seamen are wards of the court, but I am

> not disposed to give a man anything that I do not think he is entitled to. I do think he is entitled to something in this case, and I think that the most I could conscientiously allow him is $250, and I therefore make the following findings as to the second cause of action * * *."

That the decision of the Circuit Court of Appeals in the Second Circuit, while in accord with the decision of the Circuit Court of Appeals in the Sixth Circuit, rendered in 1918, it is not in accord with the decision of two District Courts, and with recent decisions of the Supreme Court of the United States.

GEORGE MCMANUS,
Petitioner.

SILAS B. AXTELL,
Counsel.